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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
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| International Settlement Rates | ) | IB Docket No. 96-261 |
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# COMMENTS OF PACIFIC BELL COMMUNICATIONS

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**COMMENTS OF**
**PACIFIC BELL COMMUNICATIONS**

## I. INTRODUCTION AND SUMMARY

Pacific Bell Communications ("PBCom")[1] herein comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding concerning international settlement rates. PBCom welcomes the emergence of competition in the markets for international and domestic telecommunications services – which is abundant in PBCom's home market. Competition is flourishing in California, with a host of new entrants providing a wide range of telecommunications services. PBCom looks forward to this same level of growth in competition expanding into global telecommunications markets. PBCom plans to utilize its considerable expertise in technology, marketing, and consumer satisfaction to make a substantial contribution to the international marketplace, particularly in the vibrant Pacific Rim economy.

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[1] PBCom is a wholly-owned subsidiary of Pacific Telesis Group.

The NPRM advances the Commission's benchmark proposal with the laudable goal of promoting competition and lowering international calling rates. PBCom seeks to assist the Commission by suggesting changes in the proposal in order to better accomplish the Commission's goals. For example, to the extent that the FCC is proposing to use its benchmarks as a competitive safeguard, it should coordinate with the U.S. Trade Representative ("USTR") participating in the anticipated WTO agreement. The USTR could include the benchmarks in the negotiations either as a part of the reference paper to the agreement, or as a provision in the U.S. offer to the WTO's Group on Basic Telecommunications ("GBT").

PBCom also urges the Commission to concurrently consider alternative measures that may provide more immediate, and long-lasting, stimulation of competition in international telecommunications. One alternative would be to encourage substantial reductions in U.S. collection rates through the rapid introduction of increased competition in the U.S. international services market. This approach also has the advantage of being simpler, and far more immediate.

## II. THE COMMISSION IS CORRECT THAT THE U.S. INTERNATIONAL TELECOMMUNICATION MARKETPLACE WOULD BENEFIT FROM INCREASED COMPETITION

As the Commission notes in the NPRM, the prices charged U.S. consumers for international message telephone service ("IMTS") are much too high,[2] thus discouraging

[2] *See NPRM* at ¶ 9.

consumers from efficiently utilizing global telecommunications.[3] Efforts to correct these inefficiencies will aid in the growth of a competitive marketplace. Due to the high elasticity of demand for international calling services,[4] a substantial reduction in the rates for international calls would significantly increase the amount of traffic generated.[5]

Much of the problem, however, is the direct result of the collection rates[6] charged by U.S. carriers.[7] The size of U.S. collection rates bear little relationship to foreign accounting rates. Accounting rates have steadily declined (in terms of cents per minute) during the last decade.[8] The reductions in accounting rates have often been most dramatic in countries that receive a substantial percentage of U.S. outbound international traffic.[9] During the same

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[3] *See Id.* at ¶¶ 10, 18.

[4] *See id.*; *AT&T International Non-Dominance Order*, 3 Comm. Reg. (P & F) 111, 121 (1996).

[5] This may allow both foreign and U.S. carriers to recoup much of the revenues lost by lowering rates. *See NPRM* at ¶¶ 10, 59.

[6] The collection rate is the tariffed price a caller pays to a carrier for placing a call. *See International Accounting Rates*, Phase II, 11 FCC Rcd 6332, 6335 n.43 (1996).

[7] The Commission acknowledges in the NPRM that high international calling prices are "attributable in part to limited competition" in the U.S. IMTS market. *NPRM* at ¶ 9.

[8] The FCC reports that average international accounting rates have dropped in half during the last decade, from a high, on average, of $1.40 in 1987 to $0.73 in 1996. *See Accounting Rates for International Message Telephone Service of the United States*, FCC, International Bureau, Telecommunications Div., at 6 (Dec. 1, 1996).

[9] *See, e.g.*, Germany (from 1.2 SDRs in 1990 to 0.16 SDRs in 1997); United Kingdom (from 1.06 SDRs in 1990 to 0.25 SDRs in 1997); Mexico (from $1.45 in 1989 to $0.67 in 1997). *See IMTS Accounting Rates of the United States 1985-1997*, FCC, International Bureau, Telecommunications Div. (Feb. 1, 1997).

period, collection rates (and with them collection revenues) have continually increased.[10] The FCC acknowledged in the AT&T Non-Dominance Order that "residential IMTS pricing is significantly higher and more profitable than U.S. domestic long distance calling prices, and some IMTS prices have risen over the past several years."[11]

The growing disparity between accounting rates and collection rates is evident in the statistics published by the Commission. The collection rates for calls to many major industrialized countries are more than double the settlement rate.[12] Additionally, U.S. carriers retain nearly two thirds of the revenues collected from U.S. consumers for placing international calls to Western Europe.[13] Overall, the revenues retained by U.S. carriers account for 46%, or almost half of all revenues collected from U.S. consumers for international calls. Thus, if the FCC believes that the settlement rates charged by foreign carriers are above cost -- and they clearly are -- then the revenues retained by U.S. carriers to

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[10] Net international calling revenues for U.S. carriers have increased from $1,957.8 million in 1986 to $9,216.3 million in 1995. *See Id; see also Statistics of Communications Common Carriers*, FCC, Common Carrier Bureau, at Table 4.6 (Nov. 1996) ("*1996 Statistics*"). This is a 470% increase in less than a decade, far larger than the growth in net settlement out payments for the same period.

[11] *AT&T International Non-Dominance Order*, at 128-29 (noting that "AT&T's average revenue per minute (ARPM) for international services is $0.98, which is six times the ARPM for domestic service").

[12] *See, e.g.*, Germany (U.S. carriers retain 76% of U.S. collection revenues); United Kingdom (U.S. carriers retain 71.6% of U.S. collection revenues). *1996 Statistics* at Table 4.1.

[13] *Id.*

originate international calls likely are also above cost.[14] The disproportionately high collection rates evidences a need for increased competition in the U.S. market for international services.

## III. THE FCC SHOULD ENSURE THAT ANY BENCHMARK RULES ADOPTED ARE METHODOLOGICALLY SOUND AND JURISDICTIONALLY SUSTAINABLE

The Commission's NPRM correctly seeks to encourage lower international calling prices. It may be advisable, however, to refine the proposal's methodology in order to protect it from legal or policy challenges. Specifically, entities may attack the use of tariffed components prices ("TCPs") to estimate the actual costs of providing the national extension component of a foreign telecommunications system. An argument may be made that TCPs are artificially low because many countries are only beginning to undertake the difficult process of tariff rebalancing in order to eliminate cross subsidies.[15] The possibility that others will attack the proposal's methodology could force the Commission to defend the Benchmark Order before both U.S. courts and international bodies. This could delay introduction of

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[14] In fact, it can be argued that U.S. carriers are reaping far greater profit margins than foreign PTTs. This is because it costs far more for a foreign PTT to terminate an international call using outdated equipment than it does for a large U.S. international carrier to originate an international call using modern digital equipment. *See generally* Dr. Pekka Tarjanne, *Americas Geopolitical Challenges: Trade in Telecom Services*, Speech to the Americas TELECOM Strategies Summit and the Technology Summit, ITU, Rio de Janeiro (June 10, 1996) (noting the higher costs for some PTTs).

[15] The Commission seems to acknowledge this difficulty in the NPRM when it states that "many countries have rate structures that use high international or domestic long distance charges to offset below-cost local service fees." *NPRM* at ¶ 45. Thus, the proposed benchmark methodology may be criticized as internally inconsistent.

competition, and create a "lag" in benchmark pricing, which could redound to the detriment of U.S. consumers.[16]

The Commission also needs to better articulate its jurisdictional authority to set benchmarks.[17] Some parties are bound to challenge the Commission's statutory jurisdiction. Moreover, there are prudential issues that likely will be used by those opposed to the benchmark plan. In particular, other governments will assert their own authority over international settlement rates in order to retain the status quo or, worse, increase settlement charges. Such governments might well claim that, if the Commission has jurisdiction over settlement rates, so does each other country in a bilateral relation.

The uncertainties that exist with respect to the Commission's jurisdiction, and practical implementation issues, are likely to be raised in challenges before the U.S. Court of Appeals. Such judicial review can lead to delays in implementation of competition. Alternatively, they could lead to diplomatic conflicts that would also stall application of the new rules. Thus, the Commission should deliberate carefully before attempting to put its benchmark proposal into force.

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[16] Moreover, even if appropriate benchmark levels could be established, because telephone technology is changing so rapidly, it will be necessary for the Commission to engage in constant revision of the benchmarks.

[17] The NPRM states that the Commission believes it has the authority "under Sections 1, 4(i) 201-205 and 303(r) of the Communications Act of 1934, as amended, relevant case law, and international regulations, to take the steps described in [the] *Notice*." *NPRM* at ¶ 19 (internal cites omitted).

## IV. THE COMMISSION'S BENCHMARK PROPOSAL SHOULD BE COORDINATED WITH THE ANTICIPATED WTO GBT AGREEMENT

The Commission proposes to utilize its benchmarks to address the potential for anticompetitive conduct by foreign carriers, a concern that may be elevated by the anticipated adoption of a WTO agreement on trade in telecommunications. Specifically, the Commission proposes to condition a foreign carrier's authorization to provide switched or private line facilities-based service from the U.S. to an affiliated foreign market on the foreign country meeting the proposed benchmarks, and to condition authorizations to resell international private lines to provide switched service to the U.S. from a foreign country on accounting rates on the route being within the benchmark range.[18]

In proposing these measures, the Commission should acknowledge that substantial uncertainty exists with respect to the anticipated interpretation of the agreement by the WTO's governing body. The "legality" of the FCC's approach will be determined by a foreign juridical body applying multilateral agreements, as opposed to federal judges applying U.S. law. It is entirely possible that the Commission's proposed safeguards may not survive review by a dispute resolution panel in Geneva.[19] Thus, the Commission should clearly articulate the

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[18] *See id.* at ¶¶ 76, 82.

[19] For example, several country specific aspects of the proposed benchmarks, such as the segregation of countries into categories, and the conditioning of entrance into the U.S. market on benchmark compliance, are likely to be attacked as inconsistent with the MFN provisions of the WTO agreement. Furthermore, even if the FCC is successful in demonstrating that its

(Continued...)

steps that it will take to protect U.S. interests should enforcement of the benchmarks be effectively stayed pending international, or judicial review. The Commission should also articulate the regulatory mechanisms on which it will rely should the benchmarks ultimately fail to survive international scrutiny.

To the extent safeguards are needed, the Commission could also urge the USTR to include the benchmark proposal, and its role as a competitive safeguard, in the reference paper attached to the WTO agreement, or, in the alternative, in the U.S. offer to the WTO.[20] This would allow for resolution of any question about whether such a plan is "GATS illegal" since the benchmarks would become an articulated safeguard in the U.S. offer and an integral part of the adopted agreement.

## V. THE COMMISSION'S GOAL OF REDUCING INTERNATIONAL CALLING RATES MAY BY BEST FURTHERED BY LOWERING BARRIERS TO ENTRY IN THE U.S. INTERNATIONAL CARRIER INDUSTRY

In light of the above discussed potential for judicial challenge and administrative delay, the Commission may accomplish far more to advance the public interest by adopting alternative measures that can provide U.S. consumers with identical, or far greater relief with respect to international calling rates. The Commission states its belief that "the most effective

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(...Continued)
benchmark proposal is not "GATS illegal," the process of review by a dispute resolution panel could take considerable time.

[20] The FCC has recognized that adequate safeguards are needed to protect U.S. interests. Other countries have come to similar conclusions with respect to their own WTO offers.

way to ensure settlement rate reform that results in reasonable international calling prices is through the development of competitive markets for IMTS."[21] PBCom agrees. U.S. consumers would receive substantial benefits (in terms of lower international calling prices) if the FCC promotes the rapid infusion of competition in the U.S. IMTS market. The FCC can easily accomplish this by promptly granting authority for new competitors to begin providing international services, in competition with AT&T and the other authorized international carriers.[22]

The RBOCs are seeking to inject competition into the market for U.S. international services. Entry by the RBOCs likely will result in significant reductions in collection rates, thus greatly benefiting the public. Congress indicated that the purpose of the 1996 Act was to "accelerate rapidly" the deployment of new competitive telecommunications services "by opening *all* telecommunications markets to competition."[23] But RBOC entry into the IMTS market has thus far been delayed. For example, PBCom has applied to offer out-of-region facilities based service, but has been blocked by a specious claim by MCI -- a international carrier now

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[21] *NPRM* at ¶ 20.

[22] Furthermore, the Commission expressed concern in the NPRM about the need to "encourage U.S. carriers to reflect the reductions they receive in their settlement rates" in the prices they charge U.S. consumers. *Id.* at ¶ 91. Increased competition in the U.S. IMTS market would ensure that reductions in settlement rates would promptly be passed on to consumers.

[23] H.R. Conf. No. 104-458, 104th Cong., 2d Sess. 113 (1996) (emphasis added); *see also* 141 Cong. Rec. S7894 (daily ed. June 7, 1995) ("what we are trying to do here is to get everyone into everyone else's business") (statement of Sen. Pressler); 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) ("Congress fully expects the FCC to recognize and further its intent to open all communications markets to competition at the earliest possible date") (statement of Sen. Breaux).

profiting from the lack of competition in the U.S. international telecommunication market -- that such services are not permitted.[24]

Moreover, although the issue is not yet settled, the interexchange carriers now earning record profits are urging the Commission and the Department of Justice to utilize overly restrictive approaches to determining what satisfies the competitive checklist in Section 271. This approach would only delay the introduction of needed competition, in direct conflict to the clearly expressed goals of the Congress, and would hurt U.S. consumers.

Expediting the entry of the RBOCs into the market for international telecommunications services will accomplish as much, if not far more than the Commission's proposed benchmarks in terms of lowering international calling prices. Such an approach would also be far simpler to implement, and would permit the Commission to avoid the risks inherent in attempting unilateral enforcement of a regulatory plan that implicates the domestic policies of every U.S. trading partner.

## VI. CONCLUSION

The Commission's desire to increase competition in international telecommunications clearly is in the public interest. By any measure, the market would benefit from increased competition. The profits of U.S. international carriers are at record highs notwithstanding

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[24] MCI's claim is all the more outrageous because it is merely a repetition of a filing MCI made in a petition for reconsideration of the Out-of-Region Order, *see Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, CC Docket No. 96-21, *Report and Order*, FCC 96-288 (July 1, 1996), and its introduction as a petition to deny is no more than a transparent attempt to abuse the FCC process to choke additional competition before it can flower.

above cost accounting rates. While the Commission's benchmarks are a laudable first step, the plan needs an improved methodology and a better articulation of its jurisdictional basis in order to survive attack.

Additionally, the Commission could consider the insertion of its benchmark plan into the reference paper attached to the anticipated WTO agreement, or in the U.S. offer to the WTO's GBT. This would reduce the risk that the benchmarks could be successfully challenged by others as "GATS illegal." Furthermore, the FCC may be able to achieve the best results for U.S. consumers by using its clear statutory powers to increase competition and, as a result, encourage lower rates for international calls. In particular, the FCC should focus on complying with the Congressional intent to ensure that RBOC affiliates offer long distance services in competition with existing interexchange carriers.

Respectfully submitted,

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